

**Town of Richmond**  
**Wastewater Capacity Allocation Ordinance**

**1. Ownership and Discharge Permit:**

The Town of Richmond (“Town”) owns and operates a wastewater treatment plant (“WWTF”) located on Esplanade and a wastewater collection and transfer system (“Sewers”) as defined in 24 V.S.A. §3501(6) and 3601. The WWTF has a permitted flow and loading (BOD) capacity, and is operated in accord with a discharge permit issued by the Vermont Department of Environmental Conservation (“Department”) under authority granted in 10 V.S.A., Chapter 47. The board of water and sewer commissioners (“Board”) is obligated by law to comply with conditions of that permit, and to operate and manage the WWTF and Sewers as governmental functions under and pursuant to 24 V.S.A., Chapters 97 and 101.

**2. Introduction to Reserve Capacity Allocation**

The permitted flow and loading (BOD) capacity of the WWTF and Sewers is the property of the Town. The uncommitted reserve capacity of the WWTF and Sewers shall be allocated over the remaining life of the system by the Board in the manner described below. This ordinance is adopted pursuant to the provisions of 24 V.S.A., § 3625, in the manner provided in 24 V.S.A., Chapter 59 (or in the manner provided for in 24 V.S.A., Chapter 117), and shall not be construed as an abandonment or relinquishment of the authority or responsibility of the Board to regulate, control and supervise all means and methods of wastewater collection, treatment and disposal within the Town, nor shall it be construed to impair or inhibit the ability of the Town to contract with persons for the collection, transmission and treatment of wastewater.

Recognizing that the flow and load (BOD) on the system must be controlled, that there is insufficient capacity to service the entire Town, that uncontrolled assignment of capacity will cause growth more rapidly than other municipal services can accommodate, and that it is necessary to maintain a balance of institutional, industrial, commercial and residential uses (and a mix of housing types), the Board shall allocate pursuant to this Ordinance the uncommitted reserve capacity by use classifications within the adopted Wastewater Service Area.

The Town of Richmond WWTF has a flow design treatment capacity of 222,000 gallons per day. The WWTF currently operates at an average of 73,000 gallons per day from existing users. At the time of the adoption of this ordinance, the committed flow reserve capacity is an additional 1,100 gallons per day, leaving a total of 147,900 gallons of uncommitted flow reserve capacity available.

The Town of Richmond WWTF also has a loading design treatment capacity of 600 pounds of Biochemical Oxygen Demand (BOD) per day. The WWTF currently operates at an average of ~250 pounds BOD per day from existing users. At the time of the adoption of this ordinance, the committed BOD loading reserve capacity is an additional 100 pounds per day, leaving a total of 250 pounds of BOD loading uncommitted reserve capacity available. It should be noted loading capacity can be increased to meet demand through a pretreatment permit or WWTF process modification.

Any proposal for allocation shall take both flows and loadings into consideration before approval. These amounts are subject to change.

**3. Definitions:**

The following words will have the meanings below when used in this ordinance.

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- A. “Actual Flow”- shall mean the volume of water from any individual unit (residential, commercial or institutional) connected to the Sewers, measured at the incoming water connection by a water meter.
- B. “Allocation” - the decision by the Board to commit a specified amount of wastewater treatment flow or load (BOD) capacity measured in gallons per day (or gpd) to a specific project.
- C. “Allocation Charge” - a fee for the allocation of wastewater treatment flow or load (BOD) capacity, specified as dollars per gpd, as established by the Board.
- D. “Board” - shall mean the Water & Sewer Commission acting under 24 V.S.A., § 3614.
- E. “Committed Reserve Capacity” - the total amount of Development Wastewater Flow (gallons per day) or load (BOD) from all projects/buildings approved by the Board for discharge to the WWTF, but not yet discharging at the time of the calculation.
- F. “Department” - shall mean the Vermont Department of Environmental Conservation.
- G. “Development” - the construction of improvements on a tract of land for any purpose, including, but not limited to institutional, residential, commercial and industrial activity.
- H. “Development Wastewater Flow and Load” - the flow and load resulting from full use of the development at its peak capacity, which flow and load shall be calculated using flow and load quantities, adopted as rules by the Department, as promulgated at the time an allocation application is made.
- I. “Discharge Permit” - shall mean a permit issued by the Department pursuant to authority granted in 10 V.S.A., Chapter 47.
- J. “Enterprise Project”- any project, commercial or industrial, planned to house or otherwise to serve a business enterprise.
- K. “Holding Fee” – a fee levied by the Town on any “unused” allocation of wastewater treatment capacity, either flow or loading.
- L. “Institutional Project”- a public sector project or municipal obligation, or a project deemed by the Board to be important to the general health and well being of the community. Such projects could include schools, town offices, care facilities, medical facilities, libraries or other.
- M. “Permitted Wastewater Flow” - the maximum WWTF wastewater flow authorized in the Discharge Permit on an annual average (365 day average) basis.
- N. “Person” - shall have the meaning prescribed in 1 V.S.A., § 128.
- O. “WWTF Wastewater Flow” - the wastewater passing through the treatment plant in gallons per day on an annual average basis (365 day average) except where flows vary significantly from seasonal development. In the latter case, wastewater flow is determined as the average throughout the high

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seasonal use period, as determined by the Board.

P. “Residential Project”- any project, or part of a project, which provides residential housing. A residential project is not considered an enterprise project for the purposes of this ordinance.

Q. “Reserve Capacity” - the permitted wastewater flow or load minus the actual WWTF wastewater flow or load during the preceding 12 months.

R. “Sanitary Wastewater” - wastewater of the same character and range of strength as expected from homes.

S. “Sewers”- shall be used to mean and interchanged with “Wastewater System” in this ordinance.

T. “Wastewater Service Area” – that area of the Town of Richmond which shall be served by the Sewers and WWTF for wastewater disposal. This area shall be established by the Board and is shown on map attached as “Attachment A”. A change in the Wastewater Service Area shall constitute a change in this ordinance, and shall be adopted as outlined in Title 24 VSA section 1972.

U. “Unused allocation” - the amount of wastewater treatment capacity which has been allocated to a development which has not yet been “used” by any particular structure.

V. “Used” - an allocation (or part thereof) shall be considered as “used” when it is committed to serving a specific structure and the water meter on that structure is installed.

W. “Uncommitted Reserve Capacity” - that portion of the Reserve Capacity remaining after subtracting the Committed Reserve Capacity.

X. “Wastewater”- shall be used to mean and interchanged with ‘sewage’ in this ordinance; shall mean water discharged from buildings to the WWTF.

**4. Reserve Capacity Allocation:**

4. A. Allocation Flow and loading Basis:

All allocations to projects shall be based on the Development Wastewater Flow and loading strength. Any difference between actual flows and development wastewater flows that occurs is not available to the development owner for re-allotment to another project or a project expansion.

4. B. Determination of Annual Capacity Allocation and assignment to Allocation Categories:

During the month of June each year, the Board shall determine the Uncommitted Reserve Capacity of the WWTF for flow and loading. The Board shall designate such Uncommitted Reserve Capacity to be available for the next fiscal year. This shall be referred to as the “Annual Capacity Allocation”.

4. B.1. Should there be any existing pollution from a residential, commercial, institutional, or industrial facility within the Wastewater Service Area, and such pollution constitutes a

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public health hazard as defined in 18 V.S.A., § 2, then the Board shall grant a priority allocation from that year's Annual Capacity Allocation to obviate the public health hazard. The Board shall then assign specific capacities from the remainder of the Annual Capacity Allocation to the following Allocation Categories within the Wastewater Service Area:

- a) Residential Projects - 63% of flow reserve capacity, loading (BOD) reserved capacity to be determined.
- b) Enterprise Projects - 20% of flow reserve capacity, loading (BOD) reserved capacity to be determined
- c) Institutional Projects - 10% of flow reserve capacity, loading (BOD) reserved capacity to be determined
- d) Industrial Projects – 7% of flow reserve capacity, 17% of loading (BOD) reserved capacity (by pretreatment permit). Loading (BOD) reserved capacity can be increased subject to flows and modifications of the WWTF

The Board's assignment of capacities to the above allocation categories shall be in accordance with the goals and policies of the Richmond Town Plan. The Board, in assigning capacities to the allocation categories, may also establish conditions for the allocation of the capacities to individual projects, and such conditions shall be for purposes of implementing the goals and policies of the Town Plan. The Board reserves the right to make exceptions, modify percentages and/or approve or deny requests in the best interest of the Town.

4. B.2. No capacity shall be allocated outside the Wastewater Service Area existing on the date of the adoption of this ordinance except as specified below:

(a) In the event that any existing waste water treatment system fails outside the Wastewater Service Area, the Board may make an emergency allocation to alleviate the problem, provided that the following conditions are met:

(1) The failure has created a public health hazard, as defined in 18 V.S.A. § 2, or has the potential for causing substantial harm;

(2) All other possible solutions have been explored and found inadequate, and

(3) There will be no additional connections to any wastewater line extensions constructed to solve the problem.

(a) Any structure located outside of the Wastewater Service area, which is connected to the Sewers as of the effective date of this ordinance, may be granted additional allocation, under the same terms and conditions of this ordinance, provided that the additional allocation is used solely for the connected structure and that the Sewers are not extended beyond the connected structure.

(b) A project, which is deemed to be in the best interest of the Town, complies with the Town Plan and meets Development Review Board approval.

4. C. Individual Project Allocations:

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During the ensuing fiscal year, the Board shall consider applications for, and may grant allocations for individual projects within the Wastewater Service Area. No flow allocations shall be granted beyond the flow capacity assignments made to the allocation categories in accordance with Section 4-B-1, above, without a public vote of the Board, duly warned. The Board shall act on all applications on a first come, first served basis as soon as practical, but no later than sixty days after it receives an application. The Board may attach conditions to allocation approvals in order to achieve the goals and policies of the Town Plan.

No applications for individual project allocations shall be considered by the Board unless the project has first received sketch plan approval from the Development Review Board pursuant to the Town's Subdivision Regulations, or is to be located on a lot in an approved commercial or industrial subdivision and has received conditional use approval and site plan approval, as appropriate, in accordance with the Town's Zoning bylaws. Wastewater allocation applications (on forms provided by the Board) shall be completed and returned to the Office of the Town Manager and marked with the time and date received in the Town Offices.

4. C.1. Commercial, Industrial, Institutional and Residential Projects where flow allocation is made to individual buildings, buildings containing multiple units, and individual residential lots.

(a) If granted, the Board shall make flow allocations to individual buildings or to individual units in a multiple unit building, not total development projects.

(b) The flow allocation shall be considered as “used” by the building when the water meter serving the building or individual unit is installed.

-- Until this meter is installed, the flow allocation is considered as “unused” and is subject to Holding Fees for flow and loading (BOD) in accordance with Section 8 of this Ordinance.

-- After installation of the meter, water and wastewater usage is subject to the Town's water and wastewater use fees in accordance with the rate tables and classes established, including the industrial fee if so warranted. All fees are on a separate attachment, updated annually.

(c) If a flow or loading (BOD) allocation is not “used” within three (3) years of the date the allocation is granted by the Board, it shall expire and be added to the Town's Uncommitted Reserve Capacity. There shall be no refund of any flow or loading (BOD) allocation fees paid. The Board may grant an extension of up to three years if it finds that the holder of the allocation has been working diligently to implement the project and no relevant local or state approvals have expired. The Board shall not be obligated to approve an extension.

4. C.2. Commercial, Industrial, Institutional and Residential Projects where the allocation is granted to an entire Subdivision.

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- (a) If granted, the Board shall assign a flow allocation to an individual subdivision for all of the commercial or dwelling units in that subdivision. An industry shall have a separate and distinct flow and loading (BOD) allocation in all cases.

(b) The flow allocation to a subdivision will be apportioned to individual buildings within that subdivision according to the estimated wastewater needs of each building or individual unit as part of a multi-unit building. The application shall clearly state the amount requested for each lot and/or building and/or unit in the subdivision. The flow capacity apportioned to a specific building or individual unit thereof shall be considered as “used” by that building or individual unit thereof when the water meter serving the building is installed.

- ◆ Once the meter is installed, the original flow capacity allocated to the building or individual unit thereof shall be deducted from the subdivision's “unused” allocation.

The “used” flow capacity shall be subject to the Town's water and wastewater use fees in accordance with the rate tables and classes established, including the industrial fee if so warranted. All fees are on a separate attachment, updated annually.

- ◆ The subdivision's remaining “unused” flow allocation shall be subject to Holding Fees in accordance with Section 8 of this Ordinance.

(b) If an allocation is not “used” within three (3) years of the date the allocation is granted by the Board, it shall expire and be added to the Town's unallocated reserve capacity. There shall be no refund of any flow or loading (BOD) allocation fees paid. The Board may grant an extension of up to three years if it finds that the holder of the allocation has been working diligently to implement the project and no relevant local or state approvals have expired. The Board shall not be obligated to approve an extension.

4. C.3. Commercial, Institutional or Residential Projects where allocation is granted to an existing building, or individual unit as part of a multi-unit building, connected to the Sewers for a proposed change of use or increase in capacity. An industry shall have a separate and distinct flow and loading (BOD) allocation in all cases.

- (a) If granted, the Board shall grant a flow allocation to individual buildings or individual units thereof.
- (b) The flow allocation to an existing building or individual unit thereof shall be apportioned according to the estimated wastewater needs of the building or unit. The application shall clearly state the amount requested for each building or unit.
  - ◆ Once the change of use of the building or unit is completed the additional flow capacity allocated to the building shall be considered “used”.

The “used” flow capacity shall be subject to the Town’s water and wastewater use fees in accordance with the rate tables and classes established, including the industrial fee if so warranted. All fees are on a separate attachment, updated annually.

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- (c) If an allocation is not used within three (3) years of the date the allocation is granted by the Board, it shall expire and be added to the Town's Uncommitted Reserve Capacity. There shall be no refund of any flow or loading (BOD) allocation fees paid. The Board may grant an extension of up to three years if it finds that the holder of the allocation has been working diligently to implement the project and no relevant local or state approvals have expired. The Board shall not be obligated to approve an extension.

4. D. Adjustment of Allocation for new and existing connections:

The Board allocates flow and loading (BOD) reserve capacity to a specific parcel of land for a specific project. After completion of the project, or upon permit expiration, the Town will determine if the flow and loading (BOD) allocation (adjusted to the actual development constructed, if necessary) is accurate.

- 4. D.1. When a new project that has received a wastewater flow allocation has been completed and on line for at least one year, the Town shall monitor its Actual Flow from that year and determine the actual average daily flow based on metered consumption, unless an alternate method is approved by the Board. This will be compared with the estimated development wastewater flow on which the allocation was based.
- 4. D.2. For new projects, if the actual first year average daily flow exceeds the flow and/or the loading (BOD) allocation, the applicant must immediately apply for an additional flow and/or loading (BOD) allocation equal to the difference, and will pay the standard flow and/or loading (BOD) allocation fee assessed per gpd by the Town at that time.
- 4. D.4. For existing connections, if the actual first year average daily flow after approval of this ordinance exceeds the flow and/or the loading (BOD) allocation for the connection, the applicant must immediately apply for an additional flow and/or loading (BOD) allocation equal to the difference, and will pay the standard flow and/or loading (BOD) allocation fee assessed per gpd by the Town at that time.

4. E. Transfer of allocation:

The internal transfer of flow and/or loading (BOD) capacity allocation is prohibited unless approved in writing by the Board at the owner's request.

**5. Cost Recovery for Wastewater Expansion:**

- 5. A. The cost of any extension of the wastewater lines or increase in loading (BOD) capacity at the WWTF beyond existing to provide for new users shall be borne by the persons to be served by the expansion, unless a public vote of all users rules otherwise.
- 5. B. Any payments made as required by Section 5 (A) shall not be construed as payments towards additional flow or loading (BOD) allocation that may be provided for the development.

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**6. Application Requirement:**

Persons wishing to use the WWTF and Sewers shall apply to the Board on a Wastewater Allocation Request form prescribed by the Board. Such application:

- 6. A. Shall be accompanied by a calculation of the Development Wastewater Flow and Loading to be generated by the project/development.
- 6. B. Shall include calculations for the volume, flow rate, strength and any other characteristics determined appropriate by the Board.
- 6. C. Unless waived by the Board all calculations required in Subsections (a) and (b) above for developments generating over 1000 gpd shall be certified by a Vermont registered engineer.
- 6. D. Shall be accompanied by plans and specifications for the construction of building sewers (from the buildings to municipal sewers) and any municipal sewer extensions, including pump stations, required to service the development prepared by a Vermont registered engineer. This requirement to submit plans and specs may be waived by the Board.

**7. Findings, Approval and Conditions:**

- 7. A. Findings: upon receipt of the wastewater allocation application and supporting documents, the Board may grant approval of an allocation from the Annual Capacity Allocation established pursuant to Section 4-B, above, upon making affirmative findings that:
  - 7. A.1. The proposed wastewater is of domestic, sanitary origin and that there is sufficient Uncommitted Flow and Loading (BOD) Reserve Capacity to accommodate the volume and strength of the proposed connection; or
  - 7. A.2. The proposed wastewater is not of domestic sanitary origin and that sufficient evidence has been presented by the applicant to demonstrate that the flow and load of the wastewater is compatible with the proper operation of the WWTF and Sewers and that the proposed wastewater will not alone or in combination with other wastes cause a violation of the discharge permit, pass through the WWTF without treatment, interfere or otherwise disrupt the proper quality and disposal of WWTF sludge or be injurious in any other manner to the WWTF or Sewers and that there is sufficient uncommitted reserve capacity in flow and loading to accommodate the strength and volume of the proposed development;
  - 7. A.3. The proposed use of wastewater flow and loading (BOD) capacity complies with the standards set forth in this Ordinance, including but not limited to Section 4C, and is not in conflict with any other ordinances duly adopted by Water & Sewer Commissioners of the Town of Richmond.
- 7.B. Approval and Conditions: The Board, after making the approval findings above, may grant approval of an allocation from the Annual Capacity Allocation established in accordance with



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Section 4-B. The allocation must be made in accordance with the provisions set forth in Section 4-C, above, and shall expire if not assigned as set forth therein. The approval shall be a binding commitment of capacity to the project contingent on compliance with any conditions attached to the approval. The Board may revoke the allocation approval upon finding that the applicant failed to meet any of conditions attached to the approval.

**8. Fees:**

After having been granted an allocation by the Board, the holder of the allocation shall be assessed flow and/or loading (BOD) allocation fees as set forth in this section. The amount of the fees shall be established by the Board, which is hereby authorized to establish or amend wastewater flow and/or loading (BOD) allocation fees from time to time, by resolution.

- 8. A. A Flow Allocation Charge shall be due upon approval of a flow allocation request for the building for which the flow allocation was granted, based on the estimated Development Wastewater Flow for that building. The full allocation charge shall be paid at the time final allocation is granted and shall be non-refundable.
- 8. B. Quarterly, the Town shall levy a Holding Fee against any flow allocation held. The Holding Fee shall be 50% of the fixed quarterly water and sewer fees multiplied by the number of new units for water and for sewer for the class of the proposed new use as established in the rate tables, and shall be due within thirty (30) days of billing date. The actual fees for all allocations will be in a separate attachment and will be updated yearly in a separate vote by the Board.

If the allocation charge is not paid within 30 days when due, the allocation shall expire and be added to the Town's Uncommitted Reserve Capacity.

- 8. C. An additional Loading (BOD) Allocation Charge for industrial or approved high strength residential, commercial or institutional connections shall be due upon approval of a loading (BOD) permit allocation request for the connection for which the loading (BOD) allocation was granted, based on the estimated Load (BOD) for that connection. This fee shall be non-refundable.
- 8. D. Quarterly, the Town shall levy a Holding Fee against any loading (BOD) capacity allocation held, including any reserve capacity as detailed in an operating permit. The Holding Fee shall be X% of the estimated fixed quarterly industrial, residential, commercial or institutional water and sewer fee at full operation for the connection based on the permit limits, and shall be due within thirty (30) days of billing date. The actual fees for all allocations will be in a separate attachment and will be updated yearly in a separate vote by the Board.
- 8. C. In cases where an allocation expires and a new person applies for capacity on the same or a different project on the same site, the Board may consider previous fees paid by the original person when establishing fees for the new project.

**9. Authority to Require Connection:**

Nothing herein shall be construed as limiting or impairing the authority of the Town or its Board to require connections to the Wastewater System under the general laws of the state or local ordinances.

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**10. Prior Allocations:**

Adoption of this ordinance and any amendment thereto shall modify any allocations of treatment capacity issued prior to the adoption of this ordinance. The new procedures established by this ordinance shall govern.

**11. Effect of Adoption of Ordinance:**

When adopted, the provisions of this ordinance shall apply. The adoption of this allocation ordinance shall not interfere with the authority and responsibility of the legislative body as Board of Water & Sewer Commissioners in matters relating to the management and operation of the Public Sewer System as provided in Chapter 97 and 101 of 24 V.S.A.

**12. Severability:**

If any portion of this Ordinance and any amendments made hereto are later held unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance and any amendments made hereto shall not be affected and shall remain in full force and effect. If any statute referred to in this Ordinance shall be amended, this Ordinance shall be deemed to refer to such amended statute.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2015.

**Town of Richmond Water & Sewer Commissioners**

\_\_\_\_\_  
Bard Hill, Chair

\_\_\_\_\_  
David Sander

\_\_\_\_\_  
Bruce Bailey

\_\_\_\_\_  
Robert Fischer

\_\_\_\_\_  
Lincoln Bressor

Received and recorded this \_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
Linda Parent, Town Clerk